Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1929

JOHN HENRY BANKS AND WIFE,
CHRISTINE M. BANKS,

Petitioners,

v.

ANNE G. PHILLIPS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

J. DAVID DUFFUS, JR.
200 E. 4th St.
P. O. Box 859
Greenville, N. C. 27834
919/758-1403

ATTORNEY FOR PETITIONERS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

John Henry Banks and wife, Christine M. Banks, petitioners herein, pray that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the

State of North Carolina entered in the above case, on November 20, 1979. Certiorari denied by Supreme Court of the State of North Carolna on March 11, 1980.

OPINIONS BELOW

The opinion of the Court of Appeals of North Carolina is reported in 260 S.E.2d 97 (NC 1979) and is also contained in Appendix B hereto, infra, App.B-2. The order of the Supreme Court of North Carolina denying certiorari is reported in 260 S.E.2d 97 (NC 1980) and is also contained in Appendix A hereto, infra, App.A-1. The order of the North Carolina Superior Court for Pitt County, North Carolina, is not reported but is contained in Appendix C hereto, infra, App.C-1.

JURISDICTION

The judgment of the North Carolina Court of Appeals (Appendix B) was entered on November 20, 1979, certiorari was denied by the Supreme Court of North Carolina on March 11, 1980. The jurisdiction of the Supreme Court is invoked under the provisions of Title 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

Whether the trial court lacked jurisdiction over the subject matter to this action?

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent portions of the United States Constitution and United States Code are set forth in Appendix D at page App.D-I.

STATEMENT

This case arises from judgment entered by the Superior Court of Pitt County, North Carolina against petitioners that a certain deed conveying property from respondent to Carl R. Woxman and wife, Suzanne K. Woxman (hereinafter called ("Woxman") be reformed evidencing reservation of all crop allotments.

Petitioners were the grantees in respondent's chain of title to a 70 acre farm. Respondent acquired the 70 acre tract of land in 1967 and combined it with her farm Serial No. B-210. Her deed stipulated that she acquired 2.0 acres of tobacco allotment with the 70 acre tract. Respondent sold the 70 acre tract to Woxman on April 24, 1973. This sale was never reported to the local Agricultural Stabilization and

and Conservation Service office (hereinafter called "ASCS") at the time. Woxman sold the tract to J. D. Dixon on December 30, 1974. This sale was not reported to ASCS office either. Mr. Dixon then sold the farm to petitioners on March 13, 1975. Subsequent to the purchase petitioners reported the purchase at the ASCS office and requested that the 70 acre tract be divided from respondent's farm Serial No. B-210 on April 11, 1975. The respondent then filed a designation of allotment form on July 14, 1975 which Woxman had signed on June 30, 1975 designating no crop allotments to go with the 70 acre tract of land. The ASCS County Committee approved the division by designation on September 5, 1975. Petitioners were then notified of the division and that they would receive

no allotments on the tract. Petitioners then appealed the County Committee decision on January 26, 1976. The Committee affirmed their earlier decision and notified petitioners on February 18, 1976 that they had full appeal rights to the state ASCS Committee. Appeal was taken by petitioners to the state committee and the state committee granted the appeal on the basis that respondent's designation request had not been timely filed and that the purchasers signing the designation, Woxman, were not interested parties in reconstitution and division of the allotments. The state committee directed the County Committee to divide the farm by the contribution method. On May 25, 1976, respondent appealed this determination

to a review committee which was duly appointed by the Secretary of Agriculture pursuant to the Agricultural Adjustment Act of 1938, as amended, to hear the application for review of the quota. The hearing was held on August 11, 1976. The review committee affirmed the State Committee's ruling.

Respondent then filed a civil action in the Superior Court for Pitt County, North Carolina on September 10, 1976 asking the court to reform her deed to Woxman by including a reservation of crop allotments unto her. The trial was held without a jury on February 20, 1978 and the court held that respondent's deed should be reformed to include such a provision. Petitioners gave notice of appeal and the North Carolina Court of Appeals affirmed the

action of the trial court in its opinion of November 29, 1979. In their brief petitioners timely raised the question of the trial court lacking subject matter jurisdiction, but the Court of Appeals held that the trial court had jurisdiction. Petitioners filed a Petition for Discretionary Review and the Supreme Court of North Carolina denied certiorari on March 11, 1980.

REASONS FOR GRANTING THE WRIT

Whether the Agricultural Adjustment Act of 1938, as amended, and regulations enacted pursuant thereto were violated where a state court reserved crop allotments in a deed?

A Writ of Certiorari should be granted in this case to determine whether a state court has the power to order reservation of crop allotments in a deed. Petitioners contend that exclusive control and jurisdiction over the allocations and transfer of crop allotments is vested in the federal government.

The Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. §1311, et seq., has been clearly held to have been a constitutional exercise of Congressional power to regulate interstate commerce. Shafter v. U.S., 229 F.2d 124, cert. den. 351 U.S. 931 (1956). The language of the Act shows the intent of Congress that there would be a scheme of federal regulation for the creation and transfer of farm marketing quotas so pervasive as to require the inference, that within

this field, no room would be left for state action. 7 U.S.C. §§1282, 1311 - 1313.

Additional regulations as to the transfer of allotments appear in 7 C.F.R. §719.8. Any farmer who is disatisfied with the marketing quota which he has received may initiate extensive review procedures provided by statute and by the Code of Federal Regulations. See 7 U.S.C. §§1363 - 66; 7 C.F.R. §§711.4 - .27. The Act has been contemplated by Congress as the exclusive method of attacking the validity of an acreage allotment. 7 U.S.C. §1367. The decision of the North Carolina Court of Appeals constitutes an indirect attack on the exclusive control and jurisdiction over the transfer of crop allotments which is vested in the

federal government. The trial court's decision is an attempt to circumvent the provisions of the Agricultural Adjustment Act by reserving crop allotments in a deed. The trial court added the following provision at the end of the description in the deed from respondent to Woxman:

> "Saving and reserving to the grantor any and all interest in and to all agricultural allotments assigned to, or in any way associated with the above-described real estate." (R.p.53-54)

In essence, the court's actions are a collateral attack on a final determination made by an ASCS review committee that petitioners were entitled to agricultural allotments. Indirect methods of review of a determination by an ASCS review committee have been forbidden.

Larkin v. Rosenberry, 54 F.Supp. 373 (D.C. Ky. 1944). The statutory pattern set up in 7 U.S.C. §§1361 - 68 provides: "the exclusive means for attacking the decisions of the county committee upon such issues." Weir v. United States, 310 F.2d 149, 157 (8th Cir. 1962).

An action for reformation of a written instrument is quite similar to an action for specific performance of a contract. Both are equitable actions which are utilized in enforcing express agreements between parties. An equitable action cannot be used to enforce an express agreement between a seller and buyer of land that crop allotments will be reserved. Conifer Farms, Inc. v. Brent, 226 S.E.2d 585 (Ga. 1976) supports this proposition. The court

notes that:

> "The crop allotments created under the Agriculture Adjustment Act (7 U.S.C.A. §1281 et seq.) although made transferable under prescribed regulations, are not ordinary intangible property subject to unrestricted alienation. A landowner acquires no vested rights in the allotments." (citations omitted) Id. at 587.

The Act directly addresses the transfer of allotments between farms stating:

> "Farm marketing quotas may be transferred only in such manner and subject to such conditions as the Secretary may prescribe by regulations." 7 U.S.C. 1313(d).

A Writ of Certiorari should be granted since affirmance of the trial court's decision by the Court of Appeals engrafts an additional method on the Agricultural Adjustment Act for transferring allotments which has not been recognized by regulations promulgated by

the Secretary of Agriculture or by case law. See, e.g., 7 C.F.R. §719.8; Hart v. Hassell, 250 F. Supp. 893, 897 (E.D.N.C. 1966) (holding that a written agreement must be signed by all persons); Williamson v. Holland, 232 F.Supp. 479, 483 (E.D.N.C. 1963) (commenting that no evidence appeared in the record showing that an agreement was signed by all persons agreeing to a reservation of allotments).

It is clear that courts are in agreement that agricultural allotments, governed by the Act and regulations promulgated pursuant thereto, run with the land and cannot be transferred or affected by bargains between individual farm owners. Hart v. Hassell, supra; Williamston v. Holland, supra; Mace v. Berry, 81 S.E.2d 276

(S.C. 1951).

Further, principles of avoiding unseemly, expensive, and dangerous conflicts of jurisdiction and of process should merit a Writ of Certiorari necessary.

CONCLUSION

For the foregoing reasons petitioners respectfully request that the Court grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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ATTORNEY FOR PETITIONERS

APPENDIX A

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

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ATTORNEY FOR PETITIONERS

No. 162PC THIRD DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1979

****

ANNE G. PHILLIPS	)	
v	)	ORDER DENYING PETITION FOR DISCRETIONARY REVIEW
CARL R. WOXMAN, JR. and wife, SUZANNE K. WOXMAN, J. D. DIXON, and JOHN HENRY BANKS and wife, CHRISTINE M. BANKS	)	(783SC1122)

****

This cause came on to be considered upon the petition of the Defendants Banks for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31; upon consideration whereof, it is adjudged by the Court in conference, this 5th day of March 1980 that the petition be denied and that it be so certified to the North Carolina

Court of Appeals.

For the Court

The foregoing order is issued over my hand and the seal of the Supreme Court this 11th day of March, 1980.

John R. Morgan
Clerk of the Supreme
Court of North Carolina

cc: North Carolina Court of Appeals
Ward & Smith, Attorneys at Law
Howard, Vincent & Duffus,
Attorneys at Law

APPENDIX B

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

JOHN HENRY BANKS AND WIFE,
CHRISTINE M. BANKS,

Petitioners,

v.

ANNE G. PHILLIPS,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF NORTH CAROLINA

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ATTORNEY FOR PETITIONERS

App. B-1

NO. 783SC1122

NORTH CAROLINA COURT OF APPEALS

Filed: 20 November 1979

ANNE G. PHILLIPS

v

Pitt County
No. 76CVS723

CARL R. WOXMAN, JR. and wife, SUZANNE K. WOXMAN, J. D. DIXON, and JOHN HENRY BANKS and wife, CHRISTINE M. BANKS

Appeal by defendants John Henry Banks and wife, Christine M. Banks, from Bruce, Judge. Judgment entered 30 May 1978 in Superior Court, Pitt County. Heard in the Court of Appeals 30 August 1979.

Plaintiff filed this civil action in September 1976 for reformation of a 1973 deed from herself to defendants Carl R. Woxman, Jr. and wife on the grounds of inadvertence and mistake by the draftsman in failing to include

in the deed a reservation to the grantor of the agricultural allotment assigned to the land and mutual mistake by plaintiff and the Woxmans in accepting a deed which did not express their mutual intent to exclude the agricultural allotment from the conveyance.

By warranty deed dated 13 December 1974, the Woxmans conveyed the property in question to J. D. Dixon. Thereafter, the Dixons conveyed the property in question to appellants by warranty deed. Defendants Woxman and Dixon did not file an answer, and default judgments were entered against them.

Plaintiff's evidence tended to show: that she bought the 70-acre farm in 1967; that the farm was not suitable for tobacco but was used for pasture land; that plaintiff used the farm's tobacco

allotment on her other two farms after going to the Agricultural Stabilization Conservation Service (ASCS) office and taking steps to have the allotment transferred to those other farms; that in 1973, plaintiff sold the farm to Woxman for approximately $18,000; that plaintiff's agent (her son and an attorney) negotiated the sale and drew the deed; that plaintiff informed her son that the tobacco allotment had been transferred to her other farms and inquired as to whether the deed to Woxman should contain a reservation to plaintiff of the allotment; that plaintiff's son, assuming the transfer of the allotment to be a legal, complete one, replied that no reservation would be required in the deed, as the allotment had been transferred;

that Woxman understood that there was no allotment on the farm and did not pay for such allotment; that the Woxmans sold the farm to Dixon; that Dixon understood when he bought the farm that there was no allotment on it; that in 1975, Dixon placed the farm with a realty firm for sale; and that the firm advertised the farm in a local newspaper, stating that it included no allotment. Dixon testified:

> "I recognize Plaintiff's Exhibit E by my signature on it. I must have signed it. I told Mr. McPherson on April 15, 1976, 'It was no allotment.' Plaintiff's Exhibit E states 'I, J. D. Dixon, being first duly sworn, state that there was no crop allotment transferred to John Henry Banks in the sale of the farm described in Deed Book 143, Page 610, and furthermore state that John Henry Banks was aware of this fact at the time of the purchase.' At the time I signed the document, I knew the

facts that I put in the piece of paper."

Defendant John Henry Banks testified: that prior to purchasing the farm, he did not see the newspaper and was never told that there was no tobacco allotment on the farm; that he went to register the farm with the ASCS office; he was informed that an allotment did exist on the property; and that he is presently using the farm for crop farming and living on it.

The trial court, sitting without a jury, made findings of fact and conclusions of law in favor of plaintiff and reformed the deeds in question. Defendants appealed.

Lanier, McPherson & Miller, by Jeffrey L. Miller, and Ward & Smith, by John A. J. Ward, for plaintiff appellee.

Howard, Vincent & Duffus, by J. David Duffus, Jr., for defendant appellants, Banks.

ERWIN, Judge.

Defendants contend that the federal marketing quotas for tobacco are controlled by Part I of Section B, Subchapter II of the Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. §1311, et seq., and thus, the Superior Court of Pitt County did not have jurisdiction over the subject matter of this action. We disagree and hold that the Superior Court of Pitt County had jurisdiction to hear and to decide whether deeds describing North Carolina land executed by North Carolina residents may be reformed although such reformation relates to a tobacco allotment.

Defendants contend the failure of

the trial court to grant defendants' motions for directed verdicts was improper and constituted reversible error. We do not agree.

This case was tried by the court without a jury. In trials by the court, the former motion for nonsuit has been replaced by the motion for a dismissal. G.S. 1A-1, Rule 41(b), of the Rules of Civil Procedure. We will treat the motion for nonsuit at the close of all the evidence as a motion for dismissal. Schafran v. Cleaners, Inc., 19 N.C. App. 365, 198 S.E.2d 734, cert. denied, 284 N.C. 255, 200 S.E.2d 655 (1973).

This Court stated in Town of Rolesville v. Perry, 21 N.C. App. 354, 357, 204 S.E.2d 719, 721 (1974):

> "'In ruling on a motion to dismiss under Rule 41(b), applicable only "in an action tried by the court without a

> jury," the court must pass upon whether the evidence is sufficient as a matter of law to permit a recovery; and, if so, must pass upon the weight and credibility of the evidence upon which the plaintiff must rely in order to recover.' Knitting, Inc. v. Yarn Co., 11 N.C. App. 162, 180 S.E. 2d 611."

The court made the following findings of fact: Plaintiff and the original purchaser, Woxman, had agreed that the farm land would be sold without the agricultural allotments. Through the inadvertence of and mistake of the deed's draftsman, the deed as executed and recorded failed to express this intent of the parties, and defendants Banks, subsequent purchasers of the property, had purchased the land with actual knowledge that the land had been sold without the agricultural allotments.

The court's findings of fact are supported by the evidence in the record, and the evidence in the record before the trial court was sufficient to deny defendants' motion for a dismissal under G.S. 1A-1, Rule 41(b), of the Rules of Civil Procedure. We do not find error.

The Court stated in Durham v. Creech, 32 N.C. App. 55, 58-60, 231 S.E. 2d 163, 166-67 (1977):

> "Where a deed fails to express the true intention of the parties, and that failure is due to the mutual mistake of the parties, or to the mistake of one party induced by fraud of the other, or to the mistake of the draftsman, the deed may be reformed to express the parties' true intent. Parker v. Pittman, 18 N.C. App. 500, 197 S.E. 2d 570 (1973) . . . .
>
> * * *
>
> When, due to the mutual

mistake of the parties, or perhaps a mistake by their draftsman, the agreement expressed in a written instrument differs from the agreement actually made by the parties, the equitable remedy of reformation is available. However, reformation on grounds of mutual mistake is available only where the evidence is clear, cogent and convincing. Parker v. Pittman, supra. . . .

* * *

Reformation is not barred because Margie Creech conveyed the land to third parties, the Smiths. In Archer v. McClure, 166 N.C. 140, 144, 81 S.E. 1081 (1914), our Supreme Court said:

> '...where because of mistake an instrument does not express the real intention of the parties, equity will correct the mistake unless the rights of third parties, having prior and better equities, have intervened.'

A third party's equities are not great enough unless he is a bona fide purchaser, i.e., one who purchases without notice, actual or constructive, and who pays

> valuable consideration. Morehead v. Harris, 262 N.C. 330, 137 S.E. 2d 174 (1964); Crews v. Crews, 210 N.C. 217, 186 S.E. 156 (1936); Dobbs, Remedies, § 11.6 (1973)."

The equitable remedy of reformation of a deed will be granted when it is shown by clear, cogent, and convincing evidence that due to the mutual mistake of the parties, the deed does not express the actual agreement made between the parties. Yopp v. Aman, 212 N.C. 479, 193 S.E. 822 (1937); Durham v. Creech, supra. The record is replete with competent evidence supporting all the material facts found by the trial court. The conclusions of law as entered by the trial court are proper. In holding that there was clear, cogent, and convincing evidence entitled plaintiff to reformation of her deed, we do not

intimate what effect this reformation will have with any governmental agency's actions relating to the allotments.

The judgment entered below is Affirmed.

Judges MARTIN (Robert M.) and WEBB concur.

APPENDIX C

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

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ATTORNEY FOR PETITIONERS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
76 CVS 723

STATE OF NORTH CAROLINA

COUNTY OF PITT

ANNE G. PHILLIPS, Plaintiff	)	
v.	)	JUDGMENT
CARL R. WOXMAN, JR. AND WIFE, SUZANNE K. WOXMAN, J.D. DIXON, AND JOHN HENRY BANKS AND WIFE, CHRISTINE M. BANKS, Defendants	)	

This matter having come on to be heard and having been heard before the undersigned Judge Presiding at the February 20, 1978, Session of the Pitt County Civil Superior Court; and,

The Court having heard the evidence, and based on such evidence and the stipulations of the parties,

The Court makes the following:

FINDINGS OF FACTS

1. On the 17th day of April, 1973, Anne G. Phillips (Widow) was the owner of a certain tract or parcel of real estate situate and being in Chicod Township, Pitt County, North Carolina, more particularly described as follows:

> Beginning at a ditch, W. B. Dixon line, thence running with his line to the P. W. Arnold line; thence with the canal, Arnold's line to John Paramore's line; thence with Paramore's line to the Harris line; thence with said Harris line to John Paramore's line; thence with Paramore's line to an old corner known as Hosea Buck corner; thence northwardly to the beginning, containing 70 acres more or less, and known as the Harper land.

2. On or about April 17, 1973, Anne G. Phillips (Widow) agreed to sell for valuable consideration the Harper Land to defendants Carl R. Woxman, Jr., and wife, and the defendants Woxman

agreed to buy the Harper Land from plaintifff Anne G. Phillips.

3. Plaintiff Anne G. Phillips and defendant Woxman agreed that the Harper Land would be conveyed with no agricultural allotment of any nature or description attached or assigned to the conveyed property. Plaintiff Phillips and defendants Woxman further agreed that the referenced conveyance would be reduced to writing the form of a Warranty Deed, specifically designating the exclusion of agricultural allotments from the conveyance and reserving same to the Grantor, plaintiff Anne G. Phillips.

4. The reference agreement between Anne G. Phillips and the defendants Woxman constituted the mutual intent of the plaintiff Anne G.

Phillips and the defendants Woxman.

5. Through the inadvertence and mistake of the draftsman, the Deed executed by plaintiff Anne G. Phillips to Carl R. Woxman, Jr., and wife, Suzanne K. Woxman, and recorded Book R-41, at Page 65, of the Pitt County Registry, failed to express the intent of the parties.

6. Through mutual mistake plaintiff Anne G. Phillips executed and defendants Carl R. Woxman, Jr. and Suzanne K. Woxman accepted the Deed dated April 17, 1973, which Deed did not express the mutual intention of the parties thereto to designate the exclusion of the agricultural allotments from the conveyance.

7. The consideration (total purchase price) paid by defendants Woxman and accepted by plaintiff Anne G. Phillips

was tendered and accepted solely and exclusively for the conveyance of real estate, and no consideration of any nature was tendered and/or accepted for agricultural allotments.

8. Plaintiff Anne G. Phillips, defendant Carl R. Woxman, Jr., for himself and as agent for Suzanne K. Woxman, and the draftsman, Dallas W. McPherson, admitted and confirmed that the intentions of the parties at the time of the transfer were to transfer and convey the Harper Land with the specific exclusion of all agricultural allotments which were agricultural allotment to be retained by the Grantor, Anne G. Phillips. They also acknowledge the intention to reduce the mutual understanding to writing and to fact that the draftsman erred in the

preparation of the document.

9. On or about December 13, 1974, defendants Carl R. Woxman, Jr. and wife, Suzanne K. Woxman, conveyed the Harper Land to defendant J. D. Dixon (Deed recorded in Book D-43, at Page 533, Pitt County Registry), both parties mutually agreeing and consenting to the understanding that the Harper Land was conveyed with no agricultural allotments of any description.

10. During the winter of 1975 Mr. J. D. Dixon listed the Harper Land for sale with Mr. Frederick Morton at Stallworth Realty in Greenville, North Carolina. The listing with Stallworth Realty provided specifically, which provision was included in its listings and advertisements, that the property

would be sold with no allotments.

11. That on or about the 13th day of March, 1975, J. D. Dixon and wife, Mattie D. Dixon, conveyed to John Henry Banks and wife, Christine M. Banks, for valuable considerations, the Harper Land.

12. Prior to and on the date of the conveyance of the Harper Land to the defendant Banks, the defendants Banks had actual knowledge of the fact that no agricultural allotments of any kind were to be transferred to them by the conveyance of the Harper Land by the Dixons.

13. Prior to and at the time of the transfer of the property between the defendants Dixon and the defendants Banks, the defendants Banks were informed by real estate broker, Frederick Morton, and/or

the defendant, J. D. Dixon, that the property was being conveyed without agricultural allotments of any type.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The parties are properly before the Court.

2. All matter of notice and service are proper.

3. Entry of Default was properly executed against Carl R. Woxman, Jr. and wife, Suzanne K. Woxman, and J. D. Dixon.

4. The Deed dated April 17, 1973, from Anne G. Phillips (Widow) to Carl Romaine Woxman, Jr., recorded in Book R-41, at Page 65, of the Pitt County Registry, failed, through the mutual mistake of the parties thereto, to express the agreement and intent of the parties

thereto that all agricultural allotments assigned to or associated with the real estate (Harper Land) were reserved to the Grantor, Anne G. Phillips.

5. The Deed dated April 17, 1973, from Anne G. Phillips (Widow) to Carl Romaine Woxman, Jr., recorded in Book R-41, at Page 65, of the Pitt County Registry, failed, through the mistake of the draftsman, to express the agreement and intent of the parties that all agricultural allotments assigned to or associated with the real estate (Harper Land) were reserved to the Grantor, Anne G. Phillips.

6. The defendants John Henry Banks and wife, Christine M. Banks, had actual notice that no agricultural allotments were transferred with the conveyance from John D. Dixon and wife, Mattie D.

Dixon, recorded in Book I-43, at Page 610, of the Pitt County Registry.

7. Defendants John Henry Banks and wife, Christine M. Banks, are not prejudiced by the reformation of Deed dated April 17, 1973, and recorded in Book R-41, at Page 65, of the Pitt County Registry to reflect the retainage of all agricultural allotments to Anne G. Phillips.

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED:

1. The Deed dated April 17, 1973, from Anne G. Phillips (Widow) to Carl Romaine Woxman, Jr., and recorded in Book R-41, at Page 65, of the Pitt County Registry, be and hereby is reformed in the following manner:

a. By adding to the end of the description in the Premises of the Deed:

> Saving and reserving to the Grantor any and all interest in and to all agricultural allotments assigned to, or in any way associated with the above-described real estate.

b. By modifying the Habendum Clause of the Deed as follows:

> TO HAVE AND TO HOLD the above-described lot or parcel of land, together with all the privileges and appurtenances thereto, saving and excepting agricultural allotments which are specifically excluded, belonging or in any way appertaining unto the said party of the second part, his heirs and assigns, to his only use and behoof in fee simple forever.

2. The Register of Deeds of Pitt County, North Carolina, shall record this Judgment and make marginal entries on the Deed recorded in Book R-41, at Page 65, of the Pitt County Registry, reflecting the reformation herein and the recordation of the Judgment.

3. The Register of Deeds of Pitt County, North Carolina, shall make

marginal entries reflecting the recordation of the Judgment in the Deed recorded in Book D-43, at Page 533, of the Pitt County Registry, and the Deed recorded in Book I-43, at Page 610, of the Pitt County Registry.

This the 26 day of May, 1978.

The Honorable R. Michael Bruce

APPENDIX D

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

JOHN HENRY BANKS AND WIFE,
CHRISTINE M. BANKS,

Petitioners,

v.

ANNE G. PHILLIPS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF NORTH CAROLINA

J. DAVID DUFFUS, JR.
200 E. 4th St.
P. O. Box 859
Greenville, N. C. 27834
919/758-1403

ATTORNEY FOR PETITIONERS

7 United States Code §1367. The commencement of judicial proceedings under this part shall not, unless specifically ordered by the court, operate as a stay of the review committee's determination. Notwithstanding any other provision of law, the jurisdiction conferred by this part to review the legal validity of a determination made by a review committee pursuant to this part shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this part.

AFFIDAVIT OF SERVICE

STATE OF NORTH CAROLINA)
) SS:
COUNTY OF PITT)

I, J. David Duffus, Jr., depose and state that I am the attorney of record for John Henry Banks and wife, Christine M. Banks, the petitioners herein. Pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the foregoing petition for Writ of Certiorari on each of the parties to be served herein, as follows:

On Anne G. Phillips, respondent herein, by mailing her counsel of record three copies in a duly addressed envelope with first class postage pre-paid to: Jeffrey L. Miller, Lanier, McPherson & Miller, P. O. Box 1505, Greenville, North Carolina 27834.

J. DAVID DUFFUS, JR.
200 E. 4th St.
P. O. Box 859
Greenville, N. C. 27834
919/758-1403

ATTORNEY FOR PETITIONERS

Subscribed and sworn to before me this

3rd day of June, 1980.

Linda M. Dail
Notary Public - State
of North Carolina

My Commission Expires: 7-5-82

LINDA M. DAIL
NOTARY
PUBLIC
CRAVEN COUNTY, N.C.